

Federal Communications Commission

FCC 03-226

Before the
Federal Communications Commission
Washington, D.C. 20554

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DISC

In the Matter of

Verizon Petition for
Limited Modification of a LATA
Boundary to Provide Expanded Local
Calling Service (ELCS)

WC Docket No. 02-328

MEMORANDUM OPINION AND ORDER**Adopted: September 15, 2003****Released: September 26, 2003**

By the Commission.

I. INTRODUCTION

1. On June 27, 2002, Verizon Maine (Verizon), pursuant to section 3(25) of the Communications Act of 1934, as amended (Act),¹ filed a petition (Verizon Petition)² to provide flat-rated, non-optional expanded local calling service (ELCS) between an exchange in Maine and an exchange in Canada.³ Specifically, Verizon's petition requests limited modification of a local access and transport area (LATA)⁴ boundary to provide ELCS between Verizon's Lubec, Maine exchange and the New Brunswick Telephone Company's Campobello, New Brunswick, Canada exchange.⁵ For the reasons stated below, we grant Verizon's petition.

¹ We refer to the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (1996 Act), as the Communications Act or the Act. 47 U.S.C. § 151 *et seq*

² See Request for Limited Modifications of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) Between Verizon Maine Exchange Area (Northeast 120 LATA) and New Brunswick Telephone Company's Campobello, New Brunswick, Canada Exchange, CC Docket No. 02-328, filed June 27, 2002, *see also Comments Sought on Verizon Bell Request for Limited Modification of LATA Boundary to Provide Expanded Local Calling Service Between Certain Exchanges in Maine*, WC Docket No. 02-328, Public Notice, 17 FCC Rcd 20873 (2001)

³ See Verizon Petition, Attach. at 1, *see also* Letter from Richard T. Ellis, Director-Federal Regulatory Advocacy, Verizon to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-328 (filed June 26, 2003)

⁴ Section 3(25) of the Act defines LATAs as those contiguous geographical areas established prior to enactment of the 1996 Act by a Bell Operating Company (BOC) such that no exchange area includes points within more than "one metropolitan statistical area, consolidated metropolitan statistical area, or state, except as expressly permitted under the AT&T Consent Decree", or established or modified by a BOC after such date of enactment and approved by the Commission. 47 U.S.C. § 153(25)(B)

⁵ We note that modifying the LATA boundary will have no jurisdictional effect on the U.S.-Canadian border. Both Verizon and New Brunswick Telephone Company recognize these calls as international, and consistent with our rules applicable to international service, Verizon Maine has filed an application for authority under section 214

II. BACKGROUND

2. Prior to the adoption of the 1996 Act, the United States District Court for the District of Columbia recognized that certain local calling areas crossed LATA boundaries, and, in certain limited circumstances, allowed a Bell Operating Company (BOC) to provide local service across a LATA boundary by instituting ELCS (also known as extended area service or EAS).⁶ ELCS allows a BOC to extend the provision of local service to exchanges in adjacent or nearby LATAs.⁷ Under section 3(25)(B) of the Act,⁸ requests for LATA boundary modifications, including those for ELCS, fall within the Federal Communications Commission's (Commission) exclusive jurisdiction.⁹ Applying a two-part test, the Commission will grant a request for a LATA boundary modification where: (1) the applicant proves that the requested LATA modification would provide a public benefit (typically by showing that there is a significant community of interest among the affected exchanges); and (2) granting the petition would not have a negative effect on a BOC's incentive to fulfill its section 271 obligations.¹⁰

of the Act to provide international service to Campobello. *See Comments Sought on Verizon Application for Grant of Section 214 Authorization to Provide International Facilities-Based Service Between Lubec, Maine and Campobello Island, Canada*, File no. ITC-214-20030516-00243, Public Notice, (rel. July 3, 2003) (Int'l Bur. 1999). This case is distinguishable from our February 4, 2002 declaratory ruling in which we stated that we were not in a position to unilaterally create an extended calling plan between Laredo and Nuevo Laredo. *See Proposal by City of Laredo, Texas, and Nuevo Laredo, Mexico, To Create a Cross-Border Local Calling Area*, FCC 02-14, Declaratory Ruling, 17 FCC Rcd 2494, 95 (rel. Feb. 4, 2002). In that ruling, we recognized the public interest benefits of reduced cross-border calling prices, but noted that any plan to lower international rates between Laredo and Nuevo Laredo would require participation and mutual cooperation among the carriers involved (as well as a regulatory policy in Mexico that would permit such reduced calling prices). *Id.* There was no evidence of a mutual willingness between U.S. and Mexican carriers to exchange international traffic patterns pursuant to arrangements that differ from the official accounting rates applicable to such cross-border traffic. *Id.* Moreover, the Commission found that the Mexican regulatory system lacked the flexibility to permit such changes. *Id.* Absent mutual cooperation between the carriers and the regulatory flexibility to alter rate arrangements, the Commission determined that it was not in a position to unilaterally create an international expanded calling area. *Id.* Here, unlike in the Laredo case, the Canadian carrier, New Brunswick Telephone Company, has been providing one-way ELCS from Campobello to Lubec, Maine since September 2000. *See Verizon Petition at 2, 3.* Thus, our decision to grant a minor LATA boundary modification in this case serves to facilitate a calling plan arrangement agreed to by carriers on both sides of the U.S.-Canadian border and will provide Lubec's residents with local dialing parity to that enjoyed by their counterparts in Campobello.

⁶ *United States v. Western Electric Company, Inc., et al.*, 569 F. Supp. 990, 994 (D.D.C. 1983).

⁷ *See United States v. Western Electric Co., Inc.*, 569 F. Supp. 1057, 1002 n.54 (D.D.C. 1983).

⁸ 47 U.S.C. § 153(25).

⁹ *See Application for Review and Petition for Reconsideration or Clarification of Declaratory Ruling Regarding U.S. WEST Petitions to Consolidate LATAs in Minnesota and Arizona*, NSD-L-97-6, Memorandum Opinion and Order, 14 FCC Rcd 14392, 14399 (1999) (*Minnesota/Arizona LATA Order*). We note that intraLATA ELCS routes can be ordered by a state commission. *Western Electric Company*, 569 F. Supp. at 995. "The distance at which a local call becomes a long distance toll call has been, and will continue to be, determined exclusively by the various state regulatory bodies." *Id.*

¹⁰ *See Ameritech Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS)*, NSD-01-151, Memorandum Opinion and Order, DA 03-1379 (Wireline Comp. Bur. 2003) (applying

3 The Verizon Petition proposes to establish two-way, flat-rated, non-optional ELCS, and is accompanied by an order issued by the Maine Public Utilities Commission (Maine Commission) approving the ELCS request on the basis that a sufficient community of interest exists to warrant such service.¹¹ The Verizon Petition also includes a statement of the location of the affected exchanges and a statement of the number of access lines involved.¹²

III. DISCUSSION

4. We conclude that, as a threshold matter, we have jurisdiction to modify LATA boundaries to create an international LATA.¹³ We base this conclusion on the exclusive authority over LATA boundaries conferred on the Commission in the Act.¹⁴ Our conclusion also is consistent with pre-1996 Act precedent,¹⁵ which we have found to be persuasive in our LATA boundary modification analysis.¹⁶ Accordingly, we believe that the exclusive authority over LATA boundaries accorded to the Commission by the Act permits us to modify a LATA boundary to create an international LATA.¹⁷

a two-part test to grant SBC's request to provide ELCS in Michigan), *Application for Review of Petition for Modification of LATA Boundary*, NSD-L-98-116, Order on Review, 17 FCC Rcd 16952, 16958 (2002) (*Erving LATA Order*) (establishing a two-part test to grant Verizon's request to provide ELCS in Massachusetts); *Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, CC Docket No. 96-159, Memorandum Opinion and Order, 12 FCC Rcd 10646, 10649-50 (1997) (*1997 LATA Order*) (listing the factors the Commission will consider in reviewing ELCS petitions). In the *1997 LATA Order*, the Commission also delegated authority to the Common Carrier Bureau (now the Wireline Competition Bureau) to act on petitions to modify LATA boundaries. *1997 LATA Order*, 12 FCC Rcd at 10657-58.

¹¹ See Verizon Petition at 3, Attach.

¹² The Lubec exchange has approximately 1,403 access lines. See Verizon Petition at 2. No customer polls were conducted to demonstrate a community of interest because they were not required under the Maine Basic Calling Area Rules. Further, no usage data for the exchanges at issue was available. See *id*.

¹³ Because Verizon's petition concerns the novel issue of whether the Commission may modify a LATA boundary to create an international LATA, the Commission will consider and resolve the Verizon Petition. See 47 C.F.R. § 0.291(a)(2).

¹⁴ 47 U.S.C. § 153(25), see *Minnesota/Arizona LATA Order*, 14 FCC Rcd at 14399.

¹⁵ See *United States of America v. Western Electric Company, Inc., and American Telephone and Telegraph Company, et al.*, 592 F. Supp. 846 (D.D.C. 1984) (No. 82-0192) (*Western Electric*) (determining that Michigan Bell calls between Detroit, Michigan and various Windsor, Ontario exchanges were intraLATA calls).

¹⁶ *1997 LATA Order*, 12 FCC Rcd at 10657-58.

¹⁷ See *Western Electric*, 592 F. Supp. at 862. We also note that Verizon has filed an application with the International Bureau to obtain authorization under section 214 of the Act and section 63.18 of the Commission's rules to provide international service. On June 3, 2003, the International Bureau placed this application on public notice and indicated that the grant of Verizon's 214 application was predicated on the success of its LATA boundary modification application.

5 We also conclude that Verizon's petition should be granted because it satisfies our two-part test. Applying the first prong of the two-part test, we find that Verizon has shown that a public benefit would result from the expanded local calling options that the LATA boundary modification would provide. We base our determination on the Maine Commission's conclusion that "... a sufficient community of interest exists between Lubec and Campobello to justify a waiver of our rules so as to expand Lubec's BSCA, on a flat rated, non-optional basis to Campobello."¹⁸ The Maine Commission considered a call volume analysis for determining community of interest calling, noting that there appears to be "a high level of social and economic interaction between Lubec and Campobello," that the communities share medical and emergency services, and that many Campobello residents work in Lubec.¹⁹ We believe that this determination by the Maine Commission is persuasive evidence that a sufficient community of interest exists among the affected exchanges to justify the ELCS.²⁰ We also are persuaded that a community of interests exists because New Brunswick Telephone Company bills service from Campobello to Lubec as one-way, local service.²¹ Accordingly, we conclude that Verizon has satisfied the first prong of our two-part test. In reaching this conclusion, we note that we received no objections to the grant of Verizon's petition.

6 Applying the second prong of the two-part test, we find that granting the Verizon Petition would have no effect upon on Verizon's incentive to fulfill its section 271 obligations, because Verizon has opened its market to competition in Maine and has been granted authority to offer long distance service in that state.²² Moreover, the modification would only affect approximately 1,400 access lines, a relatively small number.²³ As a result, we believe that granting Verizon's petition serves the public interest by permitting a minor LATA modification where such modification is necessary to meet the needs of local subscribers. Accordingly, we grant Verizon's petition to modify the Lubec, Maine LATA for the limited purpose of allowing Verizon to provide two-way, flat-rated, non-optional ECLS between Verizon's Lubec, Maine exchange and the New Brunswick Telephone Company's Campobello, New Brunswick Canada exchange.

¹⁸ Verizon Petition, Attach. at 3.

¹⁹ *Id*

²⁰ We reach our conclusion that Verizon satisfies the first prong of the Commission's two-part test notwithstanding that Verizon's application did not include some of the data we look for in our *prima facie* analysis. See *supra* n 7. Although the Maine Commission did not conduct polls or provide usage data to document its community of interest finding, the Maine Commission's order was appropriately premised on available calling data and the close social and economic ties between the affected exchanges. See *Verizon Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS)*, WC Docket No. 02-237, Memorandum Opinion and Order, DA 03-790 (Wireline Comp. Bur. 2003).

²¹ See Verizon Petition at 2.

²² See *Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Maine*, CC Docket No. 02-61, Memorandum Opinion and Order, 17 FCC Rcd 11659 (2002).

²³ See *supra* n.23

7. We grant this relief solely for the limited purpose of allowing Verizon to provide ELCS between the specific exchanges or geographic areas identified in these requests. The LATAs are not modified to permit the BOC to offer any other type of service, including calls that originate or terminate outside the specified areas described above.

IV. ORDERING CLAUSE

8. Accordingly, IT IS ORDERED, pursuant to sections 3(25) and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 153(25), 154(i), that the request of Verizon Maine for LATA modification for the limited purpose of providing two-way, flat-rated, non-optional ELCS at specific locations, identified in WC Docket No. 02-328, IS APPROVED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary